

**Small Claims
Final Determination
Findings and Conclusions**

Petitions: 45-004-11-1-5-00003
45-004-12-1-5-00009
45-004-13-1-5-00775-16
45-004-14-1-5-00773-16
45-004-15-1-5-00976-16
Petitioner: Elkhart Rentals, LLC/Chris Schaap¹
Respondent: Lake County Assessor
Parcel: 45-08-10-405-001.000-004
Assessment Years: 2011-2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on June 11, 2012. Petitioner initiated the 2012 appeal with the PTABOA on January 29, 2013. The PTABOA issued notices of final determination for 2011 and 2012 on October 1, 2014. Petitioner then timely filed its Form 131 petitions with the Board.
2. Petitioner initiated the 2013 appeal on May 22, 2014, the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For all three years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on September 12, 2016. Neither the ALJ nor the Board inspected the property.
5. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Danny Cruz, Calumet Township Residential Supervisor, were sworn as witnesses for Respondent.

¹ The 2011 and 2012 appeals were filed by Elkhart Rentals, LLC. The 2013-2015 appeals were filed by Chris Schaap.

Facts

- 6. The subject property is a single-family dwelling located at 1601 Georgia Street in Gary.
- 7. Respondent determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2011	\$6,600	\$78,000	\$84,600
2012	\$5,900	\$70,600	\$76,500
2013	\$5,900	\$69,600	\$75,500
2014	\$5,900	\$70,500	\$76,400 ²
2015	\$5,900	\$48,600	\$54,500

- 8. Petitioner requested the following assessed values:

Year	Total
2011	\$15,450
2012	\$13,133
2013	\$11,294
2014	\$9,374
2015	\$7,780

Record

- 9. The official record contains the following:
 - a. A digital recording of the hearing
 - b. Exhibits:

Petitioner Exhibit 1:	Appraisal by Roy Gouwens
Petitioner Exhibit 2:	2011 property record card (“PRC”)
Petitioner Exhibit 3:	2012 PRC

² Mr. Cruz testified that the value for 2014 was \$76,400 but Pet’r Exs. 2-5 show an assessed value of \$72,400 for 2014.

Petitioner Exhibit 4: 2013 PRC
Petitioner Exhibit 5: 2014 PRC
Petitioner Exhibit 6: 2015 PRC
Petitioner Exhibit 7: Annual Adjustment of Assessed Values Fact Sheet

Board Exhibit A: Form 131 petitions
Board Exhibit B: Notices of Hearing
Board Exhibit C: Hearing sign-in sheet

c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
12. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value decreased from \$96,300 in 2010 to \$84,600 in 2011. Petitioner, therefore, has the burden of proof for 2011. Assigning the burden for the other years at issue will depend on the final determinations for each respective preceding year.

Summary of Parties' Contentions

15. Petitioner's case:

- a. Petitioner contends that the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Gouwens estimated a value of \$15,000 as of March 1, 2010. *Schaap testimony; Pet'r Ex. 1.*
- b. In an attempt to trend the 2010 appraised value to the 2011 valuation date, Petitioner applied the market adjustment value of 1.03 shown on the 2011 PRC. Applying the 1.03 value to the \$15,000 appraisal estimate results in a proposed assessed value of \$15,450 for 2011. *Schaap testimony; Pet'r. Ex. 2.*
- c. For 2012, the market adjustment value was .85. Applying the .85 value to the 2011 value of \$15,450 results in a proposed assessed value of \$13,133 for 2012. *Schaap testimony; Pet'r Ex. 3.*
- d. For 2013, the market adjustment value was .86. Applying the .86 factor to the 2012 value of \$13,133 results in a proposed assessed value of \$11,294 for 2013. *Schaap testimony; Pet'r Ex. 4.*
- e. For 2014, the market adjustment value was .83. Applying the .83 factor to the 2013 value of \$11,294 results in a proposed assessed value of \$9,374 for 2014. *Schaap testimony; Pet'r Ex. 5.*
- f. For 2015, the market adjustment value was .83. Applying the .83 factor to the 2014 value of \$9,374 results in a proposed assessed value of \$7,780 for 2015. *Schaap testimony; Pet'r Ex. 6.*
- g. Petitioner is uncertain as to what the property rented for during the year at issue. Furthermore, Petitioner contends that Respondent has not provided comparable rental or sales data for purposes of applying the gross rent multiplier ("GRM") method. *Schaap testimony.*

16. Respondent's case:

- a. As an alternative to the original assessed values, Respondent alluded to applying the gross rent multiplier ("GRM") method. Respondent contends that with regard to the GRM method, the rental rate was not provided to them so they used an average of \$750. Mr. Cruz further testified that he believed the GRM for the area was five.

Respondent did not make any calculations or provide a proposed value under the GRM method. *Metz testimony; Cruz testimony.*

- b. With regard to Petitioner Exhibit 7, Respondent contends that the fact sheet contained therein only applies to the 2014 pay 2015 tax year and there is nothing to indicate that it would apply to prior years. Furthermore, there is nothing to indicate that the annual adjustments shown on the fact sheet would apply to an appraisal. *Metz testimony.*

ANALYSIS

17. The Board finds that the assessed values should be reduced for each year at issue and it reached that decision for the following reasons:
 - a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
 - c. The Board will first address Respondent’s GRM analysis. By statute, the GRM method is preferred for this type of rental property. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the GRM “is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units...”
 - d. Respondent alluded to applying a GRM analysis. Mr. Cruz testified that they were not provided any rental data so they used an average of \$750. He further testified that he believed the GRM for the area was five so that was the multiplier that was applied. Respondent provided no support for either of those values. Also, Respondent did not provide any calculation with regard to those values nor did Respondent offer any

proposed value as a result of its purported GRM analysis. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995). Consequently, the Board finds Respondent's GRM analysis is not probative of the subject's true tax value. The Board next turns to the specific years at issue.

2011 Assessment

- a. As stated above, Petitioner had the burden of proof for 2011. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the subject property at \$15,000 as of March 1, 2010. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property's true tax value.
- b. Petitioner contends that the appraised value should be trended to the March 1, 2011, valuation date. Petitioner attempted to trend the appraised value to the 2011 valuation date by applying the market adjustment value of 1.03 shown on the 2011 PRC.
- c. While the market adjustment value appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that factor in this case is not reflective of the overall annual trending factor for 2011 because the total assessed value decreased from 2010 to 2011. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessed value. As discussed previously, statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination.
- d. Respondent did not offer any evidence to prove that the original assessed value for 2011 is correct. In the alternative, Respondent offered a rudimentary GRM analysis which, for reasons discussed above, the Board finds is not probative of the subject property's value. Therefore, the Board finds that the 2011 assessed value should be changed to \$15,000 in accordance with Petitioner's appraisal.

2012 – 2015 Assessments

- a. As will be discussed below, the Board ultimately finds that the assessed values for years 2012 – 2015 will also each be changed to \$15,000. Because the original assessed value for each of those years represents an increase from each respective previous year's value of \$15,000, Respondent has the burden of proving that the assessed values for 2012 – 2015 are correct.

- b. Respondent did not offer any evidence to prove that the original assessed values for 2012 – 2015 are correct. In the alternative, and as was the case for 2011, Respondent offered a rudimentary GRM analysis which, for reasons discussed above, the Board finds is not probative of the subject property's value.
- c. As was the case for 2011, Petitioner contends that the values for 2012 – 2015 should each be trended forward using the market adjustment value found on each respective PRC. For the same reasons that were discussed with regard to Petitioner's 2011 proposed value, the Board finds that Petitioner similarly did not provide credible evidence to support its proposed values for 2012 – 2015.
- d. If an assessor fails to meet its burden and neither party offers probative evidence to show the property's actual true tax value, the assessment reverts to the previous year's level. Ind. Code § 6-1.1-15-17.2(b). Accordingly, the Board finds that the 2012 – 2015 assessed values should each be changed to \$15,000.

CONCLUSION

18. While the GRM method is the preferred method for this type of rental property, the Board finds that Respondent's GRM analysis is not probative of the subject property's true tax value. With regard to the parties' proposed values for the years at issue, Petitioner had the burden of proof for 2011 and provided a USPAP compliant appraisal valuing the property at \$15,000. Respondent failed to present probative evidence to rebut Petitioner's prima facie case for 2011. Respondent ultimately had the burden of proof for 2012 – 2015 and also failed to provide probative evidence for those years. Petitioner provided its own proposed values for 2012 – 2015 and similarly failed to provide credible evidence. As a result, the assessed values for 2012 – 2015 each revert to the respective previous year's value.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2011-2015 assessed values should each be changed to \$15,000.

ISSUED: November 23, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.